

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
3rd & 4th Floor, Vanijyik Kar GST Bhawan, Sector-19, Atal Nagar
Raipur (C.G.) 492002
Email ID – gst.aar-cg@gov.in

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Kalpana Tiwari
Joint Commissioner
O/o Commissioner, State Tax
Chhattisgarh, Raipur

Mr. Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur.

Sub:- Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 :-

(i) regarding applicability of GST on royalty paid in respect of mining lease and its classification under "Licensing for the right to use minerals including its exploration and evaluation falling (heading 9973) attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods".

(ii) regarding determination of the liability to pay tax on Contributions made to DMF and NMET.

Read:- Application dated 23-11-2018 from Shri P.K. Mahapatra, Assistant General Manager (Finance) NMDC Limited, ADMN Building Hilltop Road, Near CSD, 1st Floor, Bachel Complex, Dantewada (South Bastar), Chhattisgarh 494553

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/09/2018

Raipur, Dated ..22../02/2019

The applicant M/s P.K. Mahapatra, Assistant General Manager (Finance) NMDC Limited, ADMN Building Hilltop Road, Near CSD, 1st Floor, Bachel Complex, Dantewada (South Bastar), Chhattisgarh GSTIN 22AAACN7325A1Z5 has filed the application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 requesting advance ruling in respect of the following question :-



(Signature)

1. Whether royalty paid in respect of mining lease can be classified under "Licensing for the right to use minerals including its exploration and evaluation falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods".
2. Determination of the liability to pay tax on contributions made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) as per MMDR Act, 1957.

2. Facts of the case:-

- I. The Applicant NMDC Limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of steel. It is India's largest iron ore producer and exporter producing million tons of iron ore from fully mechanized mines in Chhattisgarh.

Pursuant to the agreement, NMDC Bachel is required to pay royalty as per Mines and Minerals (Development & Regulation) Act, 1957. As per Section 9 of the said Act, NMDC is required to pay royalty @15%. The Applicant seeks clarification as to whether royalty paid in respect of Mining Lease can be classified under "Licensing services for the right to use minerals including its exploration and evaluation" falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods.

- II. Further Section 9^B and 9^C of Mines and Minerals (Development & Regulation) Act, 1957 mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation and 2% of Royalty to National Mineral Exploration Trust. In this regard, the Applicant seeks clarification whether such statutory contributions made amounts to "Supply" and whether the same is liable for GST under reverse charge.
- III. As per Section 97(2) of CGST Act, advance ruling can be sought for following questions under GST :-

Clarification of any goods or services or both; Based on above, the Applicant requests clarification on classification of service by way of royalty paid in respect of Mining lease. Further, as per Section 97(2) of CGST Act, 2017 advance ruling can be sought for following questions under GST determination of the liability to pay tax on any goods or services both and whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. Based on the said Section, the Applicant wishes to seek clarification whether statutory contribution made to District Mineral Foundation (DMF) and National Mineral Exploration trust (NMET) as per MMDR Act, 1957 amounts to "Supply" and determination of liability to pay tax on such contributions made.

3. Contention of the Applicant:-



Tejwan

- 3.1 NMDC Limited is liable to pay royalty in respect of mining lease under "Licensing services" for the right to use minerals including its exploration and evaluation. Royalty is in the nature of periodical payments to be made by the lessee under his covenants in consideration of the various benefits granted by the lesser. Royalty is collected by the State Government from the business entities for right given to them to extract mineral and is payable based on quantum of mineral removed/consumed.
- 3.2 The term 'Royalty' is not defined in MMDR Act, However, the meaning of the word royalty has been considered in some judicial decisions. Many of these judicial decisions have been summed up in the judgment delivered by the Supreme Court in the case of the India Cement Ltd., etc. v. State of Tamil Nadu, etc. (AIR 1990 SC 85). The case was primarily on the legality of the cess on royalty. However, the meaning and concept of royalty has also been discussed in the judgment in an incidental manner. Although royalty has not been explicitly defined, the Supreme Court held that royalty is separate and distinct from land revenue and that it is not related to land as a unit. On the other hand, royalty is payable on the proportion of the minerals extracted and it has relationship to mining as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of the mineral extracted.
- 3.3 As per the Sectoral FAQ's published by CBEC is that "The Government provides license to various companies including public sector undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the right to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charge, royalty, etc to the Government. The activity of assignment of rights to use natural resources is treated as supply of service and the licensee is required to pay taxation on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism".
- 3.4 They also cited the recent decision by Haryana Authority for Advance Ruling in the case of M/s. Pioneer partners, wherein it was held that Royalty paid towards mining rights of stone boulders is taxable at 5% under reverse charge as under "*the services for the right to use minerals including its exploration and evaluation, as per sr. No 257 of the annexure appended to notification no. 11/2017- CT (Rate), dated 28.06.2017 is included in group 99733 under heading 9973. Hence, it attracts the same rate of tax as on supply of like goods involving transfer of title in goods as per notification no. 1/2017, - CT (Rate), dated 28.06.2017 under the CGST Act, 2017 and the corresponding State Tax notification under HGST Act, 2017 Schedule-I the stone boulders extracted by the applicant attract 5% GST (2.5% CGST+2.5% HGST) as covered under HSN 2516 (At sr. No. 124 of the notification).*"
- 3.5 Based on the above, the Applicants submission was that the entries prescribing the rate of tax for the service code 9973 does not specifically cover the Licensing services for the right to use minerals including its exploration and evaluation and therefore it will be covered under the residuary entry "leasing or rental services, with or without the operator, other than (i), (ii), (iii), (iv) and (v) above", with applicable tax rate as the same



Prison

rate of tax as applicable on the supply of like goods involving transfer of title in goods Accordingly, in such cases, the relevant tax rate as applicable on the underlying natural resource would be applicable on the amount of royalty paid. Since, Iron Ore attract 5% GST Rate, royalty paid for mining of Iron Ore will attract 5% GST Rate.

- 3.6 District Mineral Foundation (DMF) is a trust set up as a non-profit body, in those districts where mining operations are carried out. The objective of the District Mineral Foundation is to work for the interest and benefit of persons, and areas affected by mining related operation in such a manner as may be prescribed by the State Government. It is funded through the contributions from miners. The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Act, 1957 of the district in which the mining operations are carried out shall be in addition to the royalty, paid to the District Mineral Foundation of the district in which mining operations are carried, an amount of 30% of royalty. As per Notification 13/2017 Central tax (Rate), Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding the specified services are chargeable to tax under reverse charge. Therefore, the Applicant wishes to seek clarification on liability to pay tax under reverse charge on such contributions made to the funds.
- 3.7 The objective of DMF Trust is to mitigate adverse impact of mining, to work towards welfare and development of people inhabited near mining area and to ensure sustainable livelihood. In order to carry out the said objective, the contribution to such fund is made by miners. It is pertinent to note that in lieu of such contribution made, there is no supply made by the trust to the Applicant (i.e., as quid pro for the service is not received). Further, as seen in Section 7, one also has to evaluate whether the supply is in the course of business. Further, that the trust is a non-profit body organization and not involved in the course of any business, trade or commerce. Based on the above, there is no supply made in terms of Section 7 therefore liability to pay tax does not arise.
- 3.8 As per Section 2(53) of CGST Act, 2017, government means "Central Government" and as per Section 2(53) of Chhattisgarh GST Act, Government means "State Government". Further, the said trust does not fall within the definition of local authority which is defined under section 2(69) of the CGST Act, 2017. An autonomous trust set up for an independent purpose do not fall under the definition of Government or local authority. At the max, such trust may fall under the definition of 'governmental Authority' which is defined in Explanation of Section of Section 2(16) of IGST Act. Based on above, the applicant's contention was that services provided by Governmental Authority is not covered under reverse Charge and therefore the supplier is liable to charge GST and remit to the credit of Government. It was further stated by the Applicant that there is no supply made by the trust to the Applicant in return of payment made to such trust (i.e., as a quid pro for the service received) and that the objective of the trust is exploration of minerals that would facilitate high growth in the mining sector. There is no service/supply made to the payee. The payment made by the Applicant is purely in the nature of contribution and cannot be regarded as consideration.



Luwan

- 3.9 That, as per Section 7 it has to be evaluated whether the supplier is in the course of business. The trust is a non-profit body organization and not involved in the course of any business, trade or commerce and based on the above, there being no supply, made in terms of Section 7 therefore liability to pay tax does not arise. As per Section 2(53) of CGST Act, 2017, Government means "Central Government" and as per Section 2(53) of Chhattisgarh GST Act, government means "State Government". Further the said trust does not fall within the definition of local authority which is defined under Section 2(69) of the CGST act, 2017.

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the authorized representative of the applicant and accordingly, Mr. Rahul Binani (CA), Shri Vishal Bhuwalka (CA) and Shri S. Gupta, DGM (Finance) appeared for hearing on 08.01.2019. Another hearing in the case was also extended to the applicant on 21.02.2019, when Shri Rahul Binani (CA) attended and reiterated their contention. They also furnished a written submission dated 08.01.2019, which has been taken on record.

- 4.1 As regards payment of royalty towards supply of service it was contended that mining lease is a right vested in immovable property & hence not taxable; further they submitted that Royalty is 'profit a pander' that is share of profit received from land which is not taxable in GST. Without prejudice, it was submitted that royalty paid in respect of mining lease can be classified under "Licensing services for the right to use minerals including its exploration and evaluation falling under the heading 997337 attracting GST at the same rate of tax as applicable on supply. Further they relied on recent decision of Hon'ble Haryana Authority for Advance Ruling in case of M/s. Pioneer partners, wherein it was held that Royalty paid towards mining right of 'stone boulders' is taxable at same rate of goods under reverse charge.
- 4.2 Further with regard DMF and NMET they submitted that the contributions do not fall under supply and section 7 of CGST Act. However, if it is considered as supply the liability is on the trust and not on the applicant. They submitted in terms of Notification 13/2017 that liability under reverse charge is only when the supply is made by Central Government, State Government, Union Territory or local authority, as trust is not falling in any of the categories mentioned. Hence, there is no liability on the applicant to pay GST. They drew attention to Chhattisgarh district Mineral Fund Rules and NMET Rules wherein the collection is defined as 'contribution' as against consideration. Similarly, they highlighted Rule 3 wherein the Fund is created as a trust and a not for profit body and hence there is absence of supply since there is no activity in furtherance of business.
- 4.3 Also, as per National Mineral Exploration Trust Rules, 2015 it was their contention that National Mineral Exploration trust (NMET) is a trust which was set up as a non-profit body for the purpose of detailed exploration of minerals that would facilitate high growth in the mining sector. As per Section 9^{C(2)} of MMDR Act, the object of the Trust shall be to



Signature

use the funds accrued to the Trust for the purpose of regional and detailed exploration in such manner as may be prescribed by the Central Government. The funds accumulated with the NMET will be utilized to step up the exploration activities. The Applicant wished to state that in no manner such contribution made to DMF/NMET can be regarded as payment towards service by way of royalty or right to use minerals. Had such contribution been towards mining rights, the same would have been retained by State Government. The said sum is towards benefit of the interest and benefit of persons and areas affected by mining related operations, exploration activities and cannot be considered as consideration towards mining right.

- 4.4 In order to tax a particular transaction as "Supply" under Section 7 of CGST Act, there should be supply of goods or services agreed to be made for a consideration. In the instant case, supply of service is missing and therefore the main test of levy of tax under Section 7 is not satisfied. Without prejudice to the above, assuming but not admitting that there is a service provided by the trust in lieu of contribution made by the Applicant, the said service is not under notified services, under Reverse charge.

5. The legal position, Analysis and Discussion:-

- 5.1 The provisions for implementing the CGST Act and CGGST Act, 2017 are similar. Now we sequentially discuss the issues involved along with the provisions applicable in the present case:-
- 5.2 M/s NMDC Limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of Steel. M/s NMDC is India's largest iron ore producer and exporter, operating from three fully mechanized mines located in the State of Chhattisgarh and Karnataka. The operating mines of M/s NMDC include Bailadila Iron Ore Mine, Kirandul Complex, Distt. South Bastar, Dantewada (Chhattisgarh), Bailadila Iron Ore Mine, Bachel Complex, Distt. South Bastar, Dantewada (Chhattisgarh), Donimalai Iron Ore Mine, Donimalai, Distt. Bellary (Karnataka) and Diamond Mining Project, Majhgawan, Panna (Madhya Pradesh). The applicant has sought Advance ruling in respect of aforesaid issues in relation to their Bailadila Iron Ore Mine, Bachel Complex of M/s NMDC.
- 5.3 The applicant in their application seeking the advance ruling have further mentioned that Government of Chhattisgarh has issued in principle approval to NMDC Ltd (Bachel) for renewal of Mining Leases viz. Deposit No.5 MI No.A1/203 for period of 4.5 years w.e.f 11.09.2015 for an area of 540.05 ha and Deposit No.10 MI No.A1/261 for period of 4.5 years w.e.f 11.09.2015 for an area of 309.34 ha. Further that pursuant to the agreement, NMDC Bachel is required to pay royalty as per Mines and Minerals (Development & Regulation) Act, 1957.
- 5.4 Section 9 of the said Act, stipulates payment of royalty @ 15% for such mining activities. In the instant case the Applicant seeks clarification as to whether royalty paid in respect of Mining Lease can be classified under "*Licensing services for the right to use minerals including its exploration and evaluation*" falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods. Also, Section 9B and 9C of



Signature

Mines and Minerals (Development & Regulation) Act, 1957 mandates that the miners shall contribute 30% of royalty to District Mineral Foundation and 2% of Royalty to National Mineral Exploration Trust and it is in this context, the Applicant seeks advance ruling / clarifications whether such statutory contributions made amounts to "Supply" and whether the same is liable for GST under reverse charge.

5.5 Thus M/s NMDC is an enterprise of Central Government and they have been provided Government land on lease for iron ore extraction by the Chhattisgarh Government. As per Mines Act, the miners pay royalty to the State Government on the basis of quantum of minerals extracted. Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 mandates NMDC to pay royalty @ 15%. Apart from this, section 9B and 9C of the said Act mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation (Constituted on State level) and 2% of royalty to National Mineral Exploration Trust (NMET). The applicant seeks clarification with regard to tax liability and tax rate under GST on such contributions to DMF and NMET.

5.6 Section 2(98) of CGST Act, 2017 stipulates regarding liability to pay tax under reverse charge, meaning therein that the liability to pay tax shall be on the recipient of goods/services rather than the supplier of goods/services.

Section 2(98), supra reads as under:-

"reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act;

Further, Reverse Charge Mechanism is applicable for certain notified services as mentioned in Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017. As per Sl. No. 5 to the said Notification, services supplied by the Central Government, State Government, Union territory or local authority to a business entity attracts GST under reverse charge basis by the recipient of such services. Thus, entry No. (5) of the said notification states that the services supplied by the Central Government/State Government to a business entity will come under Reverse Charge Mechanism. The applicability thereof of GST rate for the aforementioned service is to be based on the classification of service. In the present case, the mining rights so granted is covered under the sub heading 997337 that specifies – 'Licensing services for the right to use minerals including its exploration and evaluation'. This is covered under entry no. 17 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017. On careful scrutiny of the notification, the aforementioned service is not covered in any of the specifically mentioned descriptions of entry no 17, and thereby it qualifies being categorized in the residual clause / serial number of entry no 17, wherein it has been specified that the rate applicable for such service should be of same rate as applicable for the supply of like goods involving transfer of title in goods.

5.7 The aforesaid views gets further strengthened on pursuing a recent Advance Ruling order no. HAR/HAAR/R/2018-19/03 dated 29.6.2018, pronounced by Haryana AAR, in the case of M/s Pioneer Partners, Bhiwani, wherein the applicant M/s Pioneer



Pawan

Partner was availing mining rights from the State Government of Haryana for extracting stone along with other associated minor minerals. In the said case it was pronounced by the authority that GST on Royalty will attract the same rate of tax as applicable to the supply of material being mined. It was further held that as the material being extracted in the said case was stone boulders which attract 5% GST on its supply, the GST on Royalty being paid by the applicant will be charged at the rate of 5% on reverse charge basis. This case we find has also been cited by the applicant in the instant case in their application.

- 5.8 On persual of the abovementioned provisions, it is evident that the business entities availing mining rights including its exploration and evaluation shall be charged to GST at the rate of tax as applicable on supply of like goods being mined. Thus we come to the considered conclusion that in the instant case GST is payable on reverse charge basis by M/s NMDC on royalty paid to the Government, at the rate of supply of like goods being mined, on account of availing mining rights
6. Now we proceed to discuss the aspect of tax liability and tax rate under GST on such contributions to DMF and NMET, raised by the applicant.
- 6.1 In this context, it is seen that Section 9B and 9C of Mines and Minerals (Development & Regulation) Act, 1957 mandates that the miner shall contribute 30% of royalty to District Mineral Foundation, DMF (Constituted on State level) and 2% of Royalty to National Mineral Exploration Trust (NMET) and it is in this context, the Applicant is seeking advance ruling / clarifications whether such statutory contributions made amounts to "Supply" and whether the same is liable for GST under reverse charge.
- 6.2 The applicant has emphasized the following points with regard to the amount contributed to DMF and NMET:-
- I. that, the amount transferred to both the trusts cannot be treated as money consideration under business.
 - II. that, DMF & NMET both are trust which shall be a non-profit body and the objective of the foundation as per Rule 5 of the said rules is as under to work for the interest and benefit of persons and areas affected by mining or mining related operations in such a manner as specified in these Rules. The objective of DMF Trust is to mitigate advance impact of mining. In order to carry out the said objective, the contribution to such fund is made by Miners. It is pertinent to note that in lieu of such contribution made, there is no supply made by the trust to the Applicant and accordingly in no manner such contribution made DMF/NMET can be regarded as payment towards services. The said sum is towards benefit of the interest and benefit of persons and areas affected by mining related operations, exploration activities and cannot be considered as consideration towards mining right



[Handwritten signature]

- 6.3 Thus the main thrust of the applicant is that the amount given to both the trusts are not a commercial transaction in the course of business and that the contributions are made for public welfare activities.

The term 'business' has been defined under section 2(17) of GST Act as under:-

"Business" includes

- a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
 - b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
 - c) An activity or transaction in the nature of sub-clause (a), whether or not there or not there is volume, frequency, continuity or regularity of such transaction;
 - d) Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
 - e) Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
 - f) Admission, for a consideration, of persons to any premises,
 - g) Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
 - h) Services provided by a race club by way of totalisator or a license to book maker in such club; and
- 6.4 As already discussed M/s NMDC is India's largest iron ore producer, engaged in mining iron ore operating from three fully mechanized mines located in the State of Chhattisgarh and Karnataka. It is for mining that they have been allotted the said mines by the State of Chhattisgarh and for which they have to pay the royalty. Thus the activities of M/s NMDC, squarely come under the definition of business as stipulated above. For this mining activity, they are also duty bound under Section 9B and 9C of Mines and Minerals (Development & Regulation) Act, 1957 for contribution of 30% of royalty to District Mineral Foundation, DMF (Constituted on State level) and 2% of Royalty to National Mineral Exploration Trust (NMET). This contribution to both the trust is on account of their mining operations being carried out. This mining gets covered under "any other similar activity, whether or not it is for a pecuniary benefit" as specified under (a) above as also under the activity for furtherance of their trade specified under (g) above. There is no ambiguity that M/s NMDC pays royalty for its business of iron ore extraction and also pays to both the trusts i.e. DMF and NMET in the course of furtherance of this business only. By no stretch of imagination, this can be treated as donation. In case of failure to contribute to the above trusts, the business/rights of iron ore extraction would legally get hampered. Whereas, donations are always voluntary here in the instant case there is compulsory payment to both the trusts in proportion to the amount of royalty. Thus there hardly remains any doubt that the contributions paid by M/s NMDC to both the trusts are amounts being paid in the course of furtherance of its business activities only.



Prasad

- 6.5 Rule 2 of Chhattisgarh District Mineral Foundation Trust Rules, 2015 stipulates the following definitions with regard to the contribution made by NMDC to DMF and NMET in addition to royalty.

Rule 2(1)(d) "Collector" shall have the same meaning assigned to him/her under the Chhattisgarh land revenue code, 1959 (No. 20 of 1959)

Rule 2(1)(e) "Contribution" means the contribution to be collected in the Trust from the holders of a mining lease or a composite license (prospection license-cum-mining lease) in case of Minerals or a mining lease or a quarry lease or a quarry permit in the case of Minor Minerals in the District at such percentage of the royalty to be paid in terms of the Second Schedule of the Act, as may be prescribed by the Central Government in the case of Minerals and such percentage of royalty to be paid in the case of Minor Minerals as may be prescribed by the State Government from to time.

- 6.6 It is amply clear from the above rules that the way in which a Collector of a District enters into an agreement/contract to gain royalty from mining lease of the Government land, in the same way he enters into an agreement with NMDC to make it contribute to both the trusts in addition to royalty. Thus both the trusts uphold parallel rights on ownership rights on Government land with regard to royalty of mining lease. Accordingly, owing to above discussions it gets concluded that the contribution made by M/s NMDC to DMF and NMET merits treatment as mining royalty in the course or furtherance of business of M/s NMDC.

- 6.7 In its contention the applicant also stated that the DMF and NMET both the trusts have been constituted under the provisions of Mines and Minerals (Development and Regulation) Act, 1957. On this basis, it was applicant's contention both the trusts could not be treated as state Government or Central Government authority. Moreover, they could not be defined as a local authority as they are not constituted as per defined parameters of the constitution nor they undertake any such activities.

In this context, Section 2(69) of the GST Act is to be examined to consider the above contention of the applicant. The definition of 'local authority' is provided as under:-

"Local Authority" means –

- a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- c) a Municipal Committee, a Zilla Parishad, a District Board and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);
- e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- f) a Development Board constituted under article 371 of the Constitution; or
- g) a Regional Council constituted under article 371A of the Constitution;



[Handwritten signature]

Point 'c', specified in the above definition of 'local authority' attains significance here i.e. "and any other authority legally entitled to, or entrusted by the Central Government or any other State Government with the control or management of a municipal or local fund". The activities undertaken by the DMF and NMET are the same as enumerated in 11th schedule (Article 243G) and 12th schedule (Article 243W) of the Indian constitution. 11th and 12th schedule supra reads as under:-

Eleventh Schedule (Article 243 G)

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.]



Ruwan



Twelfth Schedule [Article 243W of the Constitution
(Seventy-Fourth Amendment) Act, 1992]

1. Urban planning including town planning.
2. Planning of land- use and construction of buildings.
3. *Planning for economic and social development.*
4. *Roads and bridges.*
5. *Water supply for domestic, industrial and commercial purposes.*
6. *Public health, sanitation conservancy and solid waste management.*
7. *Fire services.*
8. *Urban forestry, protection of the environment and promotion of ecological aspects.*
9. *Safeguarding the interests of weaker sections of society, including the handicapped and mentally Retarded.*
10. *Slum improvement and up gradation.*
11. *Urban poverty alleviation.*
12. *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
13. *Promotion of cultural, educational and aesthetic aspects.*
14. *Burials and burial grounds; cremations, cremation grounds and electric crematoriums.*
15. *Cattle pounds; prevention of cruelty to animals.*
16. *Vital statistics including registration of births and deaths.*
17. *Public amenities including street lighting, parking lots, bus stops and public conveniences.*
18. *Regulation of slaughter houses and tanneries.*

6.8 The activities undertaken by DMF and NMET for local bodies are same as mentioned above. On above lines the duties of both the trusts on the basis of Rule 22 of Chhattisgarh District Mineral Foundation Trust Rules, 2015 mandates use of the said funds as under :-

22 Expenditure from the Trust fund- The Funds available with the Trust shall be used for:-

22(2) At least 60% of the funds available with the Trust shall be utilized for High priority areas like :-

- a) **Drinking Water Supply** :- centralized purification systems, water treatment plants, permanent/temporary water distribution network including standalone facilities for drinking water, laying of piped water supply system.
- b) **Environment preservation and pollution control measures** :- effluent treatment plants, prevention of pollution of streams, lakes, ponds, ground water, other water sources in the region, measure for controlling air and dust pollution caused by mining



Erwan

operations and dumps, mine drainage system, mine pollution prevention technologies, and measures for working or abandoned mines and other air, water & surface pollution control mechanisms required for environment- friendly and sustainable mine development.

- c) **Health care:** - the focus must be on creation of primary/secondary health care facilities in the affected areas. The emphasis should not be only on the creation of the health care infrastructure, but also on provision of necessary staffing, equipment and supplies required for making such facilities effective. To that extent, the effort should be to supplement and work in convergence with the existing health care infrastructure, the expertise available with the National Institute of Miners Health may also be drawn upon to design special infrastructure needed to take care of mining related illnesses and diseases. Group Insurance Scheme for health care may be implemented for mining affected persons.
- d) **Education :-** construction of educational institutes and vocational training centers, additional class rooms, laboratories, libraries, Art and crafts room, toilet blocks, drinking water provisions Residential Hostels for students/teacher in remote areas, sports infrastructure, engagement of teachers/other supporting staff, e-learning setup, other arrangement of transport facilities for students (bus/van/cycles/rickshaws etc.) and nutrition related programs.
- e) **Welfare of Women and Children :-** Special programmes for addressing problems of maternal and child health, malnutrition, infectious diseases, etc.
- f) **Welfare of aged and disabled people:-** Special program for welfare of aged and disabled people.
- g) **Sanitation:-** collection, transportation & disposal of waste, cleaning of public places , provision of proper drainage & Sewage Treatment Plant, provision of disposal of faecal sludge, provision of toilets and other related activities

6.9 The above mentioned activities are compulsorily to be performed by both the trusts which have been enumerated under Article 243G and 243W of the Indian Constitution to be performed by Panchayats and Municipalities respectively. Thus in terms of section 2(69) of GST Act, both DMF and NMET qualify being treated as local authority and on the basis of state Notification No. 13/2017 dated 28-06-2017 there arises the liability of payment of GST upon M/s NMDC, on the contributions made of DMF and NMET under reverse charge basis.



[Handwritten signature]

In view of the deliberations and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act,2017)

No.STC/AAR/09/2018

Raipur, Dated 22/02/2019

The ruling so sought by the Applicant is accordingly answered as under:-

- i. The royalty paid by M/s NMDC in respect of mining lease is classifiable under sub heading 997337 ; 'Licensing services for the right to use minerals including its exploration and evaluation' (covered under entry no. 17 of Notification No. 11/2017(Rate), dated 28.06.2017, attracting GST at the same rate as applicable for the supply of like goods involving transfer of title in goods, under reverse charge basis.
- ii. The contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET), by M/s NMDC as per MMDR Act, 1957 are liable to GST, under reverse charge basis.

Place: - Raipur

Date:- 22/02/2019

Seal:-



Kalpana Tiwari
22/2/2019
Kalpana Tiwari
(Member)

Rajesh Kumar Singh
22/2/2019
Rajesh Kumar Singh
(Member)

Copy to:-

1. Applicant,
2. The Commissioner, (CGGST)
3. The Principal Commissioner, (CGST)
4. The jurisdictional officer, Jagdalpur Circle-2.